

ORIGINAL

FILED

10 DEC 21 PM 3:20

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

*gbs* DEPUTY

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

10 STEPHEN J. DONELL, Permanent  
11 Receiver for Learn Waterhouse, Inc.,  
12 its subsidiaries and affiliates,

13 Plaintiff,

14 v.

15 JAMIE FOLEY,

16 Defendant.

17 CASE NO. 10 CV 2636 JLS POR  
18 COMPLAINT TO AVOID  
19 FRAUDULENT TRANSFERS AND  
20 RECOVER PROPERTY  
21 TRANSFERRED; FOR UNJUST  
22 ENRICHMENT AND RESTITUTION

23 Plaintiff Stephen J. Doneill ("Receiver"), receiver for Learn Waterhouse, Inc.  
24 and its subsidiaries and affiliates ("LWI"), avers as follows:

25 I.

**INTRODUCTION**

26 1. Learn Waterhouse, Inc., was a purported investment company created  
27 by Randall T. Treadwell.

28 ///

IDOCs:13326.5:1144403.1/

COMPLAINT TO AVOID FRAUDULENT TRANSFERS AND RECOVER  
PROPERTY TRANSFERRED; FOR UNJUST ENRICHMENT RESTITUTION

1       2. Beginning in approximately December 2003 Learn solicited  
2 investments from individuals on promises of enormous returns of as much as ten  
3 percent per month.

4       3. Certain individuals, known as Senior Member Representatives  
5 ("SMRs"), acted as salespeople, bringing in investors and, in turn, received  
6 commissions and/or enhanced returns on their own investments.

7       4. Other early investors (“Participants”) received a substantial amount of  
8 money as purported returns on their investments.

9        5.     LWI was extremely successful in attracting investors and received  
10 approximately \$84,000,000 in investments.

11       6.     LWI and several of its principals are defendants in an enforcement  
12 action commenced in this Court by the Securities and Exchange Commission  
13 (“SEC”) on October 12, 2004, entitled *Securities and Exchange Commission v.*  
14 *Learn Waterhouse, Inc., et. al.*, Case No. 04-CV-2037-W(LSP) (“SEC Action”).

15        7. The SEC alleges in its complaint that LWI was a Ponzi scheme  
16 operated in violation of federal securities laws.

17        8. On November 1, 2004 Thomas F. Lennon (“Lennon”) was appointed  
18 receiver for LWI in the SEC Action.

19        9. On November 4, 2009 Stephen J. Donnell was appointed as successor  
20 receiver for LWI in the SEC Action.

II.

## **JURISDICTION AND VENUE**

23        10. This Court has jurisdiction over the SEC Action pursuant to sections  
24 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933, 15 U.S.C. §§ 77t(b),  
25 77t(d)(1) and 77v(a), and sections 21(d)(1),(21)(d)(3)(A), 21(e) and 27 of the  
26 Securities Exchange Act of 1934, 15 U.S.C. §§ 78(u)(1), 78(u)(d)(1), 78u(d)(3)(A),  
27 78U(e) and 78aa.

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1367 and because this action is ancillary to the SEC Action and the receivership pending before this Court. Donell v. Kowell, 533 F.3d 762 (9<sup>th</sup> Cir. 2008).

12. This action involves the same series of transactions as the SEC Action.

13. Venue is proper in this district, because this action is ancillary to the SEC Action and the receivership currently pending before this Court.

III.

## THE PARTIES

14. The Receiver is the duly appointed and acting permanent receiver of LWI, its subsidiaries and affiliated entities. The Receiver was appointed by order of the United States District Court, Southern District of California in the SEC Action.

15. Defendant Jamie Foley (“Defendant”) is an individual who resides, on information and belief, in Jacksonville, Florida.

IV.

## **GENERAL ALLEGATIONS**

## A. THE SEC ACTION

16. On October 12, 2004, the SEC filed a complaint against LWI, Randall T. Treadwell, (“Treadwell”) Rick D. Sluder (“Sluder”), Larry C. Saturday (“Saturday”) and Arnulfo M. Acosta (“Acosta”), accompanied by an Emergency Ex Parte Application for Temporary Restraining Order and Orders: (1) Freezing Assets; (2) Prohibiting the Destruction of Documents; (3) Appointing a Receiver; (4) for Accounting; (5) for Repatriation of Assets; and (6) Order to Show Cause Re Preliminary Injunction (“TRO”).

17. The Complaint alleges that the Defendant (1) engaged in the offer and sale of unregistered securities in violation of Section 5(a) and 5(c) of the Securities Act of 1933 (the “Securities Act”), and (2) committed fraud in the offer and sale of securities in violation of Section 17(a) of the Securities Act, and (3) committed

1 fraud in connection with the purchase and sale of securities under Section 10(b) of  
2 the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

3       18. The Court issued a TRO and an Order to Show Cause why the TRO  
4 should not be converted into a Preliminary Injunction and why the appointment of a  
5 receiver should not become permanent.

6       19. On November 1, 2004, the Court issued a Preliminary Injunction Order,  
7 which continued in effect the terms of the TRO and converted the receiver's  
8 temporary appointment to that of a permanent receiver.

9       20. On September 8, 2005, Treadwell, Sluder, Saturday and Acosta were  
10 indicted on federal criminal charges of conspiracy and wire fraud. These criminal  
11 proceedings were designated as United States District Court, Southern District of  
12 California Case No. 05 CR 1570 W.

13       21. In light of the criminal indictment against him, on September 21, 2005,  
14 Treadwell filed a motion to stay the civil case pending the conclusion of the criminal  
15 proceedings.

16       22. The Court granted Treadwell's motion for a stay, but ordered that the  
17 receivership continue and that the terms of the Preliminary Injunction remain in  
18 effect, except those provisions which require the defendants to furnish information  
19 or records to the SEC or Receiver.

20       23. On April 27, 2006 the Court held the stay applied to the receiver's  
21 efforts to recover funds from Participants or others based on LWI's wrongdoing.

22       24. The indictment charged, among other things, that Treadwell and his co-  
23 conspirators intentionally concealed from investors that new investor funds would  
24 be used to pay back earlier investors.

25       25. The indictment also charged that Treadwell and others caused Cash  
26 Cards International, LLC to transfer investor funds received from Acosta's attorney-  
27 client trust account back to the same investors, or earlier investors, as ostensible  
28 periodic returns on investments.

1       26. On June 17, 2008 Treadwell and others were found guilty of conspiracy  
2 and wire fraud as charged in the indictment.

3       27. Following the conviction of all defendants, the stay was lifted on  
4 January 12, 2009.

5       28. On March 20, 2009, the Court granted the SEC's motion for summary  
6 judgment and entered a judgment of permanent injunction against the individual  
7 defendants in the civil case.

8       **B. OPERATION LWI**

9       29. Treadwell, with the aid of Sluder, Saturday and Acosta, through the  
10 operation of LWI and affiliated entities, including Wealth Builders Club, Inc. and  
11 Quest International, Inc., solicited money from members of the public ostensibly for  
12 participation in high-yield trading programs and venture capital investments.

13       30. Certain investors, generally those that invested in LWI early on, were  
14 recruited or invited by the defendants to become SMRs.

15       31. SMRs solicited the participation of other investors and were often paid  
16 commissions or referral fees in addition to the disbursements on their own  
17 investments. Essentially, SMRs acted as sales agents of LWI.

18       32. Participants who invested in the early stages of LWI often received  
19 substantial disbursements, as purported returns on their investments.

20       33. The funds obtained by the SMRs and Participants consist of (1)  
21 amounts transferred directly to them from LWI and (2) amounts transferred to a  
22 company known as Cash Cards International, LLC ("Cash Cards") and then  
23 withdrawn by the SMRs and Participants from their accounts at Cash Cards.

24       34. LWI was a Ponzi scheme in which very little of the money obtained  
25 from investors was invested in any legitimate investments, and any amounts paid to  
26 Participants and SMRs were paid from other investors' funds.

27       35. LWI's only source of revenue was funds from investors.

28

1       36. As a result of the Ponzi scheme perpetrated by LWI and its principles,  
2 LWI investors lost millions of dollars.

3       **C. JAMIE FOLEY**

4       37. Defendant obtained funds derived from the Ponzi scheme well in  
5 excess of the amount he invested with LWI.

6       38. The prior receiver, Lennon, demanded the return of these funds from  
7 Defendant.

8       **FIRST CLAIM FOR RELIEF**

9       **(For Avoidance of and Recovery of Fraudulent Transfers**

10      **Pursuant to California Civil Code Section 3439.04(a)(1))**

11       39. The Receiver reavers and incorporates by this reference paragraphs 1  
12 through 38, above, as though set forth herein in full.

13       40. Defendant invested in the LWI investment program.

14       41. Defendant received payments from LWI and/or related entities totaling  
15 \$18,485.00.

16       42. Some payments made to the Defendant were directed to entities owned  
17 and/or controlled by Defendant including Body Double.

18       43. The payments made to Defendant by LWI and/or its related entities  
19 were made with the actual intent to hinder, delay or defraud investors in the LWI  
20 investment program.

21       44. Investors in the LWI investment program who did not receive back all  
22 of their principal investment are creditors of LWI.

23       45. LWI presently has one or more creditors whose claim arose either  
24 before or after the payments to Defendant.

25       46. The payments made to Defendant are avoidable by the Receiver under  
26 applicable law, including California Civil Code Section 3439.04(a)(1).

1       47. The Receiver is entitled to damages from Defendant in a sum of not  
2 less than \$18,485.00 with interest as provided by law from the date of each payment  
3 made to Defendant.

## **SECOND CLAIM FOR RELIEF**

## **(For Avoidance of and Recovery of Fraudulent Transfers**

**Pursuant to California Civil Code Section 3439.04(a)(2))**

7       48. The Receiver reavers and incorporates by this reference paragraphs 1  
8 through 38, and 40 through 42 above, as though set forth herein in full.

9        49. The payments made to Defendant were made without Defendant giving  
10 a reasonably equivalent value to LWI in exchange for the payments.

11        50. At the time the payments were made to Defendant, LWI was engaged  
12 in or were about to engage in a business or transaction for which LWI's remaining  
13 assets were unreasonably small in relation to the business transaction.

14        51. At the time the payments were made to Defendant LWI believed or  
15 reasonably should have believed it would incur debts beyond its ability to pay them  
16 as they became due.

17        52. LWI presently has one or more creditors whose claims existed prior to  
18 the payments to Defendant.

19        53. LWI presently has one or more creditors whose claims arose after the  
20 payments to Defendant.

21        54. The payments to Defendant are avoidable by the Receiver under  
22 applicable law, including California Code Sections 3439.04(a)(2).

23        55. The Receiver is entitled to damages from Defendant in a sum of not  
24 less than \$18,485.00, with interest as provided by law from the date of each  
25 payment made to Defendant.

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**THIRD CLAIM FOR RELIEF**

**(For Avoidance of and Recovery of Fraudulent Transfers**

**Pursuant to California Civil Code Section 3439.05)**

56. The Receiver reavers and incorporates by this reference paragraphs 1 through 38, and 40 through 42 above, as though set forth herein in full.

57. The payments made to Defendant were made without Defendant giving a reasonably equivalent value to LWI in exchange for the payments.

58. At the time the payments were made to Defendant LWI was insolvent.

59. LWI presently has one or more creditors whose claims existed prior to the payments to Defendant.

60. The payments to Defendant are avoidable by the Receiver under applicable laws, including California Civil Code Section 3439.05.

61. The Receiver is entitled to damages from Defendant, in a sum of not less than \$18,485.00, with interest as provided by law from the date of each payment made to Defendant.

**FOURTH CLAIM FOR RELIEF**

**(Unjust Enrichment/Restitution)**

62. The Receiver reavers and incorporates by this reference paragraphs 1 through 38, and 40 through 42 above, as though set forth herein in full.

63. Defendant received at least \$18,485.00 in payments from LWI.

64. The funds received by Defendant were the proceeds of LWI's Ponzi scheme, and were paid from monies obtained from other investors in LWI.

65. As a result, Defendant has profited from the operation of LWI's fraudulent scheme. If permitted to retain the transferred funds, Defendant would be unjustly enriched at the expense of the numerous LWI investors that, in the aggregate, have lost millions of dollars.

27   ///

1       66. As a proximate result of his actions alleged herein, Defendant has  
2 received a benefit to which he was not entitled. Defendant therefore has been  
3 unjustly enriched, and the Receiver is entitled to restitution in the amount of  
4 \$18,485.00.

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**PRAYER**

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WHEREFORE, the Receiver prays as follows:

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1. For judgment against Defendant for \$18,485.00.

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2. For interest at the legal rate on the amount of the fraudulent transfers  
from the date of the transfers.

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3. For costs.

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4. For such other and further relief as the Court deems appropriate.

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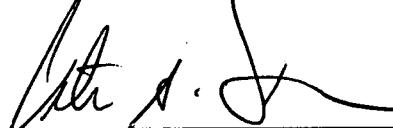
Dated: December 14, 2010

Respectfully submitted,

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ERVIN COHEN & JESSUP LLP

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By: 

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PETER A. DAVIDSON,  
Attorneys for Stephen J. Donell,  
Receiver

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**CIVIL COVER SHEET****ORIGINAL**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

STEPHEN J. DONELL, Permanent Receiver for Learn Waterhouse, Inc., its subsidiaries and affiliates

## (b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

## (c) Attorney's (Firm Name, Address, and Telephone Number)

Peter A. Davidson (SBN 76194); Ervin Cohen & Jessup LLP, 9401 Wilshire Blvd., 9th Fl., Beverly Hills, CA 90212-2974

**DEFENDANTS**

JAMIE FOLEY

10 DEC 21 PM 3:19

County of Residence of First Listed Defendant DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

BY

DEPUTY

Attorneys (If Known)

10 CV 2636

JLS POR

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		Incorporated or Principal Place of Business In This State
	<input type="checkbox"/> 2	<input type="checkbox"/> 2		Incorporated and Principal Place of Business In Another State
	<input type="checkbox"/> 3	<input type="checkbox"/> 3		Foreign Nation

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud		<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage		<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract				<input checked="" type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
	<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ft)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habens Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		
			<b>FEDERAL TAX SUITS</b>	
			<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	
			<b>IMMIGRATION</b>	
			<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 790 Other Labor Litigation	
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	
			<b>APPEALS</b>	
			<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 861 HIA (1395ft)
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	<input type="checkbox"/> 862 Black Lung (923)
			<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
				<input type="checkbox"/> 864 SSID Title XVI
				<input type="checkbox"/> 865 RSI (405(g))

**V. ORIGIN**

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation

Appeal to District Judge from Magistrate Judge

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15:77

Brief description of cause:  
Recover Fraudulent Transfers**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

18,485.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

Thomas J. Whelan

DOCKET NUMBER 04-CV-2037-W

DATE

12/13/2010

SIGNATURE OF ATTORNEY OF RECORD

*[Signature]*

FOR OFFICE USE ONLY

RECEIPT # 21435

AMOUNT

\$350.00

APPLYING IFP

(n)

JUDGE

MAG. JUDGE

12-21-10

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS021435  
Cashier ID: nsiefken  
Transaction Date: 12/21/2010  
Payer Name: ERVIN COHEN AND JESSUP

-----  
CIVIL FILING FEE

For: ERVIN COHEN AND JESSUP  
Case/Party: D-CAS-3-10-CV-002636-001  
Amount: \$350.00

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CHECK

Check/Money Order Num: 46289  
Amt Tendered: \$350.00

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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

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There will be a fee of \$45.00  
charged for any returned check.